

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ZURICH AMERICAN INSURANCE COMPANY as  
successor to ZURICH INSURANCE COMPANY, U.S.  
BRANCH,

Plaintiff,

-against-

MUNICH REINSURANCE AMERICA, INC.,  
(f/k/a American Re-Insurance Company)

Defendant.

07 CV 2943 (LBS)(MHD)

**PLAINTIFF'S INITIAL  
DISCLOSURES IN  
ACCORDANCE WITH  
F.R.C.P. RULE 26(a)(1)**

**I. PRELIMINARY STATEMENT**

Plaintiff Zurich American Insurance Company (“Zurich”) hereby makes the following disclosures pursuant to the Federal Rules of Civil Procedure 26(a)(1)(A), (B), (C), and (D). Zurich makes these disclosures subject to, and without waiving, its right to protect all communication protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege, doctrine or protection. In making these disclosures, Zurich does not waive and expressly reserves its right to object to the admissibility of any material contained in any document or in the testimony of any witnesses. Zurich also reserves its right to object to any discovery procedures involving or relating to the witnesses or documents identified herein.

These disclosures are based on information now reasonably available to Zurich, and Zurich reserves the right to modify, supplement, or augment its disclosures

based on information discovered after making these disclosures. Subject to these conditions, Zurich provides the following initial disclosures:

## II. DISCLOSURES

- A. Rule 26(a)(1)(A):** “[T]he name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information[.]”

The individuals likely to have discoverable information that Zurich may use to support its claims or defenses include current and former Zurich employees. The following list of individuals does not include expert witnesses.

<u>NAME</u>	<u>SUBJECT(S) OF DISCOVERABLE INFORMATION</u>
David D. Devinger	Former Zurich employee who is likely to have information concerning insurance claims brought by Watts and its subsidiary James, Jones, Inc. (collectively, “Watts”) against Zurich, under certain primary insurance policies issued to Watts by Zurich, related to losses and expenses Watts incurred in connection with the manufacture and sale of substandard valves and other waterworks components (the “Watts Claims”). David D. Devinger is also likely to have information concerning Zurich’s communications with Munich Re regarding the Watts Claims. Mr. Devinger is a current employee of Kemper Insurance Company, 1 Kemper Drive, Long Grove, Illinois, 60049. The company’s telephone number is 1-877-536-7376.
Bryan Feldscher	Current Zurich employee who is likely to have information regarding the Watts Claims. Mr. Feldscher may be contacted through counsel of record.
Robert Koscielniak	Current Zurich employee who is likely to have information concerning the Watts Claims and who is also likely to have information concerning Zurich’s communications with Munich Re regarding the Watts Claims. Mr. Koscielniak may be contacted through counsel of record.
Rod Kuzera	Current Zurich employee who is likely to have information concerning the billing of the Reinsurance Claims. Mr. Kuzera may be contacted through counsel of record.
Theresa McDonald	Current Zurich employee who is likely to have information concerning the Reinsurance Claims and who is also likely to

	have information concerning Zurich's communications with Munich Re regarding the Watts Claims. Ms. McDonald may be contacted through counsel of record.
Dawn Renke-Brazier	Former Zurich employee who is likely to have information concerning the Watts Claims and who is also likely to have information concerning Zurich's communications with Munich Re regarding the Watts Claims. Ms. Renke-Brazier may be contacted through counsel of record.
Rachel Van der Linde	Current Zurich employee who is likely to have information concerning the Reinsurance Claims and who is also likely to have information concerning Zurich's communications with Munich Re regarding the claims against Watts and the Reinsurance Claims. Ms. Van der Linde may be contacted through counsel of record.

**B. Rule 26(a)(1)(B):** “[A] copy of, or a description by category and location of, all documents, electronically stored information, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.”

1. Zurich's non-privileged claim materials concerning the Watts Claims, located in files at Zurich's offices in Schaumburg, Illinois and Baltimore, Maryland.

2. To the extent not covered by category 1, bills rendered to and paid by Zurich in connection with defense of the Watts Claims.

3. Zurich's non-privileged placement materials concerning Facultative Certificate numbers 008 782 992, 008 896 425, 009 031 142, 009 088 822, 009 236 266, and 009 252 225 (the “Facultative Certificates”), located in files at Zurich's offices in Schaumburg, Illinois.

4. Zurich's non-privileged reinsurance claim materials concerning the Reinsurance Claims made by Zurich against Munich Re under the Facultative Certificates, copies of which are located at Zurich's office in Schaumburg, Illinois.

5. Reinsurance Notice of Loss Updates, including but not limited to, written claim updates dated on or around September 21, 2001; December 10, 2001; April 25, 2002; September 16, 2002; December 23, 2002; April 1, 2003; August 4, 2003; November 7, 2003; February 17, 2004; May 17, 2004; January 24, 2005; and February 22, 2006. Zurich has already provided copies of these Reinsurance Notice of Loss Updates to Munich Re.

6. Reinsurance Billings, including but not limited to, the billing dated August 2, 2004 for \$19,874,063.47, the billing dated June 12, 2006 for \$29,078,479.09, and the supplemental billing dated June 26, 2007, bringing the total due Zurich to \$30,659,171.51. Zurich has already provided copies of these Reinsurance Billings to Munich Re.

7. Watts Industries, Inc., v. Zurich American Insurance Co., Case No. BC 245144 (Cal. Super. Ct. Nov. 22, 2002), the California Superior Court Order (the "2002 Order") that required Zurich to fully indemnify Watts and James Jones Company ("Jones") for all amounts which have been, or will in the future be, paid pursuant to or as a result of the DWP settlement in the Armenta Action. Zurich has already provided a copy of the 2002 Order to Munich Re.

8. Watts Industries, Inc., v. Zurich American Insurance Co., Case No. BC 25144 (Cal. Super. Ct. Aug. 6, 2004), the California Superior Court Order (the “2004 Order”) enforcing the 2002 Order that required Zurich to fully indemnify Watts and Jones for all amounts which have been, or will in the future be, paid pursuant to or as a result of the DWP settlement in the Armenta Action. Zurich has already provided a copy of the 2004 Order to Munich Re.

9. Watts Industries, Inc. v. Zurich American Insurance Co., 2007 Cal. App. Unpub. LEXIS 1802 (March 5, 2007), the California Appellate Court Order (the “Appellate Order”) affirming the trial court’s upholding of the 2002 Order and the 2004 Order that both required Zurich to fully indemnify Watts and Jones for all amounts which have been, or will in the future be, paid pursuant to or as a result of the DWP settlement in the Armenta Action. Zurich has already provided a copy of the Appellate Order to Munich Re.

- C. Rule 26(a)(1)(C):** “[A] computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered[.]”

Zurich has suffered damages in the amount of at least \$30,659,171.51, plus any additional amounts due to Zurich under the Facultative Certificates as of the date of judgment, plus the applicable rate of interest, as a result of Munich Re’s breach of the Facultative Certificates. Damages also include Zurich’s attorneys’ fees and expenses arising from Munich Re’s breach of the Facultative Certificates. Zurich will provide

Munich Re with a computation of these expenses, attorneys' fees and costs following the conclusion of this action.


Zurich reserves the right to supplement this disclosure of damages upon discovery of additional information.

**D. Rule 26(a)(1)(D):** “[F]or inspection and copying as under Rule 34 an insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payment made to satisfy the judgment.”

Zurich is not aware of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

Dated: July 27, 2007

CHADBOURNE & PARKE LLP

By: 

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